IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 917 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

VALIBHAI UMARJIBHAI PATEL

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Appeal No. 917 of 1994

MR HC BUCH for Petitioner No. 1-4

MR IM PANDYA Ld. APP for Respondent No. 1

CORAM : MR.JUSTICE J.R.VORA

Date of decision: 17/07/2003

ORAL JUDGEMENT

1. This appeal is preferred by the ori. accused of Special Atrocity Case No. 85/1993 being aggrieved by the judgment and order recorded by the ld. Special Judge,

Bharuch on 31.8.1994 convicting all four appellants for the offence punishable under sec. 451 of IPC and sentencing them to six months' R/I along with fine of Rs. 100/. Sentencing all the four accused for the charges levelled against them under sec. 323 of IPC and sentencing each of the appellants to undergo imprisonment of three months and fine of Rs. 100/ and sentencing appellants no. 1 and 2 for the charges under sec. 506(2)of IPC and sentencing each of the appellants no. 1 and 2 to undergo six months R/I and fine of Rs. 100/.

2. The present appellants were charge-sheeted by Amod Police Station in the above said special atrocity case for the offence committed by them under sec. 451, 323, 504 and 506(2) of IPC read with sec. 114 of IPC. For sec. 135 of Bombay Police Act and for offence under sec. 3(1)(10) of the Atrocities Act, the ld. Special Judge vide order impugned was pleased to acquit all the accused for the offence charged against them under sec. 3(1)(10) of the Atrocities Act, for the offence under sec. 504 of IPC and for the offence charged against them under sec. 135 of the Bombay Police Act, as aforesaid, all the four appellants who are convicted for the offence under sec. 451 and 323 of the IPC, as aforesaid, and the appellants no. 1 and 2 were convicted for the offence under sec. 506(2) of IPC and hence, this appeal.

3. Ld. advocate Mr. HC Buch appearing for the appellants and Ld. APP Mr. IM Pandya appearing for the respondent-State were heard. So far as the conviction of all the appellants under sec. 451 of IPC and under sec. 323 of IPC is concerned, ld. advocate for the appellants has submitted that a compromise is recorded between the parties and has stated that those offences between the parties are compounded. Ld. advocate appearing for the appellants is producing on record an affidavit of ori. complainant Savitaben sworn in before the Registrar, Sessions Court, Bharuch wherein she has stated that she has compounded the offence without any coercion and for future peace between the parties, it is requested that the compounding of offence be recorded and permission be granted under sec. 320(2) of the Code of Criminal Procedure to compound the offence under sec. 451 of IPC. The said affidavit, a certificate issued by Kurchan Gram Panchayat about the compromise taken place between the parties, a certificate issued by the President, Social Justice Committee, Amod is also presented and an affidavit of other witnesses of the village is also presented on record by ld. advocate for the appellants. All those papers are taken on record.

4. Having regard to what is stated in the affidavit by the complainant and as urged on behalf of the appellants by the ld. advocate for the appellants, permission to compound the offence under sec. 451 of IPC is granted. The compromise between the parties so far as sec. 323 and 451 of IPC is concerned, is recorded. The subsequent effect of recording of such compromise is an acquittal of the accused from the above said charges and hence, the present appellants are acquitted of the charges levelled against them for sec. 451 and 323 of IPC setting aside the conviction as awarded by the ld. Special Judge in the order impugned.

5. So far as the conviction of appellants no. 1 and 2 under sec. 506 is concerned, on perusing the record it is clearly transpired that in her deposition complainant Savitaben was found ambiguous about which accused committed the said offence by threatening her for taking her life. Ld. Special Judge convicted the appellants no. 1 and 2 under sec. 506(2) of IPC because he relied upon witness Pravinbhai Manilal who deposed that appellants no. 1 and 2 threatened the complainant to kill, while the evidence of complainant is not clear as to who in fact, threatened her to kill. The evidence of Pravinbhai Manilal witness of prosecution relied upon by the trial court is also not sufficient to bring home the charge against appellants no. 1 and 2 under sec. 506(2) of the IPC. On going through the record, it clearly transpires that prosecution witness Pravinbhai Manilal is a chance witness. Ordinarily, his presence at the scene of offence would not be natural because witness Pravinbhai Manilal was not staying in the falia where complainant was staying, therefore, the case of prosecution in respect of charge against the appellants no. 1 and 2 for the offence punishable under sec. 506(2) of IPC is doubtful and cannot be believed. The net result of the discussion is that the appeal is required to be allowed on this core also because the prosecution failed to prove the case against the appellants no. 1 and 2 so far as the charge under sec. 506(2) of IPC is concerned.

6. In the result, on account of compromise recorded between the parties, the order of conviction in respect of all the four appellants under sec. 323 and 451 of Indian Penal Code is set aside and the appellants are acquitted for the above said charges under sec. 451 and 323 of the Indian Penal Code. For the above said reasons, the appeal of appellants no. 1 and 2 in respect of their conviction under sec. 506(2) of Indian Penal Code is required to be allowed. The conviction recorded

by the ld. trial judge which is impugned in this appeal is therefore set aside. The appellants no. 1 and 2 are acquitted of the charges levelled against them under section 506(2) of Indian Penal Code. The appeal stands disposed of and is allowed to the aforesaid extent.

(J.R. VORA, J.)

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